

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment to Title 35, Part 1, Chapter 1, Section 78m, effective August 20, 1964, is hereby made. The amendment is contained in the following text: Section 78m, effective August 20, 1964, see section 78m, Part 1, 35-467, set out as complete and current text of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after August 10, 1954, see note under section 776 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Recorp. Plan No. 19 of 1939, § 3, 1, 2 eff. May 24, 1939, 15 Stat. 2175, 64 Stat. 1265, set out under section 76d of this title.

CROSS REFERENCES

Applications for unlisted trading privileges deemed filed and approved, see section 78l(d) of this title.

Cooperative association defined under Agricultural Marketing Act, as amended, see section 1141, of Title 12, Banks and Banking.

Effective date, see sections 78hh and 78nn of this title.

Issue of securities by electric utility company engaged in interstate commerce, see section 324, of Title 16, Conservation.

Periodical and other reports, see section 78m of this title.

Review by Commission of securities reports to determine if the facts are as stated, see section 78m of this title.

Section Related to the Same Subject

This section is related to sections 78a-1, 78a-2, 78a-3, 78m, 78n, 78o, 78p, 78q, 78r, 78s, 78t, 78u, 78v, 78w, 78x, 78y, 78z, 78aa, 78ab, 78ac, 78ad, 78ae, 78af, 78ag, 78ah, 78ai, 78aj, 78ak, 78al, 78am, 78an, 78ao, 78ap, 78aq, 78ar, 78as, 78at, 78au, 78av, 78aw, 78ax, 78ay, 78az, 78ba, 78bb, 78bc, 78bd, 78be, 78bf, 78bg, 78bh, 78bi, 78bj, 78bk, 78bl, 78bm, 78bn, 78bo, 78bp, 78bq, 78br, 78bs, 78bt, 78bu, 78bv, 78bw, 78bx, 78by, 78bz, 78ca, 78cb, 78cc, 78cd, 78ce, 78cf, 78cg, 78ch, 78ci, 78cj, 78ck, 78cl, 78cm, 78cn, 78co, 78cp, 78cq, 78cr, 78cs, 78ct, 78cu, 78cv, 78cw, 78cx, 78cy, 78cz, 78da, 78db, 78dc, 78dd, 78de, 78df, 78dg, 78dh, 78di, 78dj, 78dk, 78dl, 78dm, 78dn, 78do, 78dp, 78dq, 78dr, 78ds, 78dt, 78du, 78dv, 78dw, 78dx, 78dy, 78dz, 78ea, 78eb, 78ec, 78ed, 78ee, 78ef, 78eg, 78eh, 78ei, 78ej, 78ek, 78el, 78em, 78en, 78eo, 78ep, 78eq, 78er, 78es, 78et, 78eu, 78ev, 78ew, 78ex, 78ey, 78ez, 78fa, 78fb, 78fc, 78fd, 78fe, 78ff, 78fg, 78fh, 78fi, 78fj, 78fk, 78fl, 78fm, 78fn, 78fo, 78fp, 78fq, 78fr, 78fs, 78ft, 78fu, 78fv, 78fw, 78fx, 78fy, 78fz, 78ga, 78gb, 78gc, 78gd, 78ge, 78gf, 78gg, 78gh, 78gi, 78gj, 78gk, 78gl, 78gm, 78gn, 78go, 78gp, 78gq, 78gr, 78gs, 78gt, 78gu, 78gv, 78gw, 78gx, 78gy, 78gz, 78ha, 78hb, 78hc, 78hd, 78he, 78hf, 78hg, 78hh, 78hi, 78hj, 78hk, 78hl, 78hm, 78hn, 78ho, 78hp, 78hq, 78hr, 78hs, 78ht, 78hu, 78hv, 78hw, 78hx, 78hy, 78hz, 78ia, 78ib, 78ic, 78id, 78ie, 78if, 78ig, 78ih, 78ii, 78ij, 78ik, 78il, 78im, 78in, 78io, 78ip, 78iq, 78ir, 78is, 78it, 78iu, 78iv, 78iw, 78ix, 78iy, 78iz, 78ja, 78jb, 78jc, 78jd, 78je, 78jf, 78jg, 78jh, 78ji, 78jj, 78jk, 78jl, 78jm, 78jn, 78jo, 78jp, 78jq, 78jr, 78js, 78jt, 78ju, 78jv, 78jw, 78jx, 78jy, 78jz, 78ka, 78kb, 78kc, 78kd, 78ke, 78kf, 78kg, 78kh, 78ki, 78kj, 78kk, 78kl, 78km, 78kn, 78ko, 78kp, 78kq, 78kr, 78ks, 78kt, 78ku, 78kv, 78kw, 78kx, 78ky, 78kz, 78la, 78lb, 78lc, 78ld, 78le, 78lf, 78lg, 78lh, 78li, 78lj, 78lk, 78ll, 78lm, 78ln, 78lo, 78lp, 78lq, 78lr, 78ls, 78lt, 78lu, 78lv, 78lw, 78lx, 78ly, 78lz, 78ma, 78mb, 78mc, 78md, 78me, 78mf, 78mg, 78mh, 78mi, 78mj, 78mk, 78ml, 78mm, 78mn, 78mo, 78mp, 78mq, 78mr, 78ms, 78mt, 78mu, 78mv, 78mw, 78mx, 78my, 78mz, 78na, 78nb, 78nc, 78nd, 78ne, 78nf, 78ng, 78nh, 78ni, 78nj, 78nk, 78nl, 78nm, 78nn, 78no, 78np, 78nq, 78nr, 78ns, 78nt, 78nu, 78nv, 78nw, 78nx, 78ny, 78nz, 78oa, 78ob, 78oc, 78od, 78oe, 78of, 78og, 78oh, 78oi, 78oj, 78ok, 78ol, 78om, 78on, 78oo, 78op, 78oq, 78or, 78os, 78ot, 78ou, 78ov, 78ow, 78ox, 78oy, 78oz, 78pa, 78pb, 78pc, 78pd, 78pe, 78pf, 78pg, 78ph, 78pi, 78pj, 78pk, 78pl, 78pm, 78pn, 78po, 78pp, 78pq, 78pr, 78ps, 78pt, 78pu, 78pv, 78pw, 78px, 78py, 78pz, 78qa, 78qb, 78qc, 78qd, 78qe, 78qf, 78qg, 78qh, 78qi, 78qj, 78qk, 78ql, 78qm, 78qn, 78qo, 78qp, 78qq, 78qr, 78qs, 78qt, 78qu, 78qv, 78qw, 78qx, 78qy, 78qz, 78ra, 78rb, 78rc, 78rd, 78re, 78rf, 78rg, 78rh, 78ri, 78rj, 78rk, 78rl, 78rm, 78rn, 78ro, 78rp, 78rq, 78rr, 78rs, 78rt, 78ru, 78rv, 78rw, 78rx, 78ry, 78rz, 78sa, 78sb, 78sc, 78sd, 78se, 78sf, 78sg, 78sh, 78si, 78sj, 78sk, 78sl, 78sm, 78sn, 78so, 78sp, 78sq, 78sr, 78ss, 78st, 78su, 78sv, 78sw, 78sx, 78sy, 78sz, 78ta, 78tb, 78tc, 78td, 78te, 78tf, 78tg, 78th, 78ti, 78tj, 78tk, 78tl, 78tm, 78tn, 78to, 78tp, 78tq, 78tr, 78ts, 78tt, 78tu, 78tv, 78tw, 78tx, 78ty, 78tz, 78ua, 78ub, 78uc, 78ud, 78ue, 78uf, 78ug, 78uh, 78ui, 78uj, 78uk, 78ul, 78um, 78un, 78uo, 78up, 78uq, 78ur, 78us, 78ut, 78uu, 78uv, 78uw, 78ux, 78uy, 78uz, 78va, 78vb, 78vc, 78vd, 78ve, 78vf, 78vg, 78vh, 78vi, 78vj, 78vk, 78vl, 78vm, 78vn, 78vo, 78vp, 78vq, 78vr, 78vs, 78vt, 78vu, 78vv, 78vw, 78vx, 78vy, 78vz, 78wa, 78wb, 78wc, 78wd, 78we, 78wf, 78wg, 78wh, 78wi, 78wj, 78wk, 78wl, 78wm, 78wn, 78wo, 78wp, 78wq, 78wr, 78ws, 78wt, 78wu, 78wv, 78ww, 78wx, 78wy, 78wz, 78xa, 78xb, 78xc, 78xd, 78xe, 78xf, 78xg, 78xh, 78xi, 78xj, 78xk, 78xl, 78xm, 78xn, 78xo, 78xp, 78xq, 78xr, 78xs, 78xt, 78xu, 78xv, 78xw, 78xx, 78xy, 78xz, 78ya, 78yb, 78yc, 78yd, 78ye, 78yf, 78yg, 78yh, 78yi, 78yj, 78yk, 78yl, 78ym, 78yn, 78yo, 78yp, 78yq, 78yr, 78ys, 78yt, 78yu, 78yv, 78yw, 78yx, 78yy, 78yz, 78za, 78zb, 78zc, 78zd, 78ze, 78zf, 78zg, 78zh, 78zi, 78zj, 78zk, 78zl, 78zm, 78zn, 78zo, 78zp, 78zq, 78zr, 78zs, 78zt, 78zu, 78zv, 78zw, 78zx, 78zy, 78zz.

§ 78l. Applications for unlisted trading privileges deemed filed under section 78i of this title.

Any application to continue unlisted trading privileges for any security heretofore filed by any exchange and approved by the Commission pursuant to clause (1) of subsection (f) of section 78i of this title and rules and regulations thereunder shall be deemed to have been filed and approved pursuant to clause (1) of subsection (f).

(May 27, 1936, ch. 462, § 2, 49 Stat. 1357.)

CODIFICATION

Section was not enacted as part of the Securities Exchange Act of 1934 which comprises this chapter.

CROSS REFERENCES

Effective date, see section 78hh of this title.

§ 78m. Periodical and other reports**(a) Reports by issuer of security: contents**

Every issuer of a security registered pursuant to section 78i of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be includ-

ed in or filed with an application or registration statement filed pursuant to section 78i of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

(b) Form of report; books, records, and internal accounting; directives

(1) The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer, but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires.

(2) Every issuer which has a class of securities registered pursuant to section 78i of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary; (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

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and access to assets is permitted only in accordance with management's internal or specific administrative rules.

(2) The recorded information for each class is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(c) **Alternative reports:**

If in the judgment of the Commission any report required under subsection (a) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

(d) **Reports by persons acquiring more than five per centum of certain classes of securities:**

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 78f of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing each of the following information, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

*So in original.

(A) the background and identity, residence, and citizenship of each of the state of such beneficial ownership, each person and all other persons by whom or on whose behalf the purchases have been or are to be effected.

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public.

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the background, identity, residence, and citizenship of each such associate, and.

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class exclusive of any securities of such

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class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file a copy of the statement required by paragraph (1) of this subsection on the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify. If it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.);

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person or persons of the same class during the preceding twelve months, does not exceed 2 percentum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(b) Purchase of securities by issuer

(1) It shall be unlawful for an issuer who has a class of equity securities registered pursuant to section 76f of this title, or who is a closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

(2) For the purpose of this subsection, a purchase by or for the issuer or any person con-

trolling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

(c) Reports by institutional investment managers

(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d) of this section having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts in aggregate or by type as the Commission, by rule, may prescribe with respect to which the institutional investment manager exercises investment discretion other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection, the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in subsection (d) of this section held on the last day of the reporting period by such accounts with respect to which the institutional investment manager does possess sole or shared authority to ex-

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